

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IRVING BERRY,)
)
Plaintiff,)
)
v.) No. 4:21-CV-903 AGF
)
STEVE PFISTER, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. Self-represented plaintiff Irving Berry's civil complaint for money damages and injunctive relief was received by the Court for filing on July 22, 2021. However, plaintiff neither paid the \$402 court filing fee nor filed a motion to proceed *in forma pauperis* (or without prepayment of fees or costs), along with a certified copy of his account statement. *See 28 U.S.C. § 1915(a).*¹ As such, the Court will allow plaintiff twenty-one (21) days to either pay the full filing fee or file his motion to proceed *in forma pauperis* and account statement. His failure to do so in a timely manner will result in a dismissal of this action, without prejudice.

Accordingly,

IT IS HEREBY ORDERED that the Clerk is directed to mail to plaintiff a copy of the motion to proceed *in forma pauperis* form for prisoners.

¹The Court notes that plaintiff has accumulated "three strikes" pursuant to 28 U.S.C. § 1915(g) by having three actions dismissed as frivolous, malicious and/or for failure to state a claim upon which relief may be granted. Thus, if he seeks leave to proceed *in forma pauperis* in this action, his request will likely be denied unless he can show he was under imminent danger of serious physical injury at the time of the filing of the complaint. *See Berry v. Cline*, No. 89-4146 (July 17, 1989); *Berry v. St. Louis Circuit Court*, No. 91-0248 (April 26, 1991); *Berry v. Mitchell*, No. 92-0071 (March 11, 1992). These cases were collected and mentioned in *Berry v. Schiro*, No. 00-4183 (W.D.Mo. November 6, 2000).

IT IS FURTHER ORDERED that plaintiff must either pay the \$402 filing fee **or** submit a motion to proceed *in forma pauperis* within twenty-one (21) days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff files a motion to proceed *in forma pauperis*, he must also file a certified copy of his prison account statement for the six-month period preceding the filing of the complaint.

IT IS FINALLY ORDERED that if plaintiff fails to comply with this Order, the Court will dismiss this action without prejudice. If the case is dismissed for non-compliance with this Order, the dismissal will **not** count as a “strike” under 28 U.S.C. § 1915(g).

Dated this 23rd day of July, 2021.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE